IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 28TH NOVEMBER 2006 / 7TH AGRAHAYANA 1928

OP.No. 20064 of 2002(L)

PETITIONER:

S.NAGAVENDRUDU, NO.904521434, CISF UNIT
V.S.S.C. THUMBA, ISRO P.O.

BY ADV. SRI.G.SASIDHARAN CHEMPAZHANTHIYIL,
SRI.S.VISHNU.

RESPONDENTS:
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1. **THE COMMANDANT, CISF UNIT, VSSC,**
   THUMBA, ISRO P.O.

2. **THE COMMANDANT, CISF UNIT, NFC/ECIL,**
   HYDERABAD.

3. **DIG, CISF, DEPARTMENT OF ATOMIC ENERGY,**
   ECIL, HYDERABAD.

4. **DIRECTOR GENERAL, CISF, NEW DELHI.**

5. **UNION OF INDIA, REPRESENTED BY ITS**
   SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI.

BY SRI.JOHN VARGHESE, ASST. S.G.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/11/2006,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 34414/2002 IN O.P. NO. 20064/2002

DISMISSED

28/11/2006. **SD/- A.K.BASHEER, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE MEMORANDUM NO. V-15014/CISF/NC/ADM.IV/SNV/00/1242 DTD. 19/10/2000 OF THE R.2.

EXT.P.2: COPY OF THE ORDER NO. V-15014/CISF/NFC/ADM.IV/SN/001/462 DTD. 31/03/2001 OF THE R.2.

EXT.P.3: COPY OF THE MEMO NO. E-37014/CISF/NFC/ADM III/2000-1170 DTD. 25/09/2000 OF THE R.2.

EXT.P.4: COPY OF THE REFERENCE FORM 18435 DTD. 20/09/2000.

EXT.P.5: COPY OF THE O.P. CARD OF THATHA HOSPITAL DTD. 28/09/2000.

EXT.P.6: COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE DEPUTY CHIEF MEDICAL OFFICER NFC, HYDERABAD.

EXT.P.7: COPY OF THE DEPOSITIONS OF CONSTABLE P.D. RAO AND HC/GD P.J. MATHEW.

EXT.P.8: COPY OF THE APPEAL DTD. 03/05/2001 TO THE R.3.

EXT.P.9: COPY OF THE ORDER NO. V-11014/A-11/2001/L&R/DAE-5211 DTD. 21/12/2001 OF THE R.3.

EXT.P.10: COPY OF THE REVISION PETITION DTD. 13/03/2002 TO THE R.4.

EXT.P.11: COPY OF THE JUDGMENT DTD. 26/03/2002 IN O.P. NO. 8096/2002 OF THIS HONOURABLE COURT.

EXT.P.12: COPY OF THE ORDER NO. V-11014/42/2002/L&R/1456 DTD. 24/05/2002 OF THE R.4.

O.P. NO. 20064/2002:

RESPONDENT'S EXHIBITS:

EXT.R1.A: COPY OF THE MEDICAL CERTIFICATE DTD. 31/07/99 OF THE PETITIONER.

EXT.R1.B: COPY OF THE LETTER DTD. 25/09/2000 RECEIVED BY THE PETITIONER BEARING NO. E-37014/CISF/NFC/ADM.III/2000-1170.

EXT.R1.C: COPY OF THE INVESTIGATION DONE BY THE DOCTOR DT. 24/09/2000 ALONG WITH PRESCRIPTION OF THE PETITIONER.

//TRUE COPY//

prv.

A. K. Basheer, J.

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O.P.No.20064 Of 2002-L

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Dated this the 28th day of November, 2006.

JUDGMENT

The short question that arises for consideration in this original petition is whether any interference is warranted with Ext.P12 order passed by respondent No.4. Relevant facts may be briefly noticed.

2. On October 19, 2000, petitioner was served with Ext.P1 memorandum of charges alleging misconduct and misbehavior on his part while he was on duty as Constable in the Central Industrial Security Force. One of the two articles of charge against the petitioner was that he had refused to receive the Movement order on September 30, 2000 directing him to proceed to CISF RTC Deoli for attending PT Advance course with effect from October 3, 2000. The second charge was that he had failed to reform himself despite several admonishions and punishments. On one occasion he was punished for unauthorised absence and on yet another occasion, he was found sleeping while on duty. The officer who conducted an enquiry pursuant to the memorandum of charges, found the petitioner guilty on both counts. The disciplinary authority accepted the finding and passed an order reducing his pay by two stages from Rs.3275/- to Rs.3125/- in the time scale of pay for a period of two years with immediate effect. It was further ordered that petitioner will not entitled to increments of pay during the period of reduction and that on the expiry of the period, the reduction will have the

effect of postponing his future increments of pay. Ext.P2 is stated to be a true copy of the order passed by the disciplinary authority. It is the admitted position that the appellate authority had confirmed the above order. Ext.P9 is the copy of the order passed by the appellate authority. Thereafter, respondent No.4 had considered the revision petition filed by the petitioner as directed by this court in Ext.P11 judgment. The revisional authority, while concurring with the finding of guilty against the petitioner, has nevertheless interfered with the quantum of punishment. The revisional authority modified the order and held that the pay of the petitioner be reduced by two stages from Rs.3275/- to Rs.3125/- for a period of two years. However, it was ordered that petitioner would earn increments during the period of reduction and that on the expiry of this period the reduction would not have the effect of postponing his future increments of pay. A copy of the order passed by respondent No.4 is on reocrd as Ext.P12.

While impugning Exts.P2, P9 and P12 orders, it is contended by learned counsel for the petitioner that the authorities were not justified in holding the petitioner guilty of the charges levelled against him. Learned counsel has placed heavy reliance on Exts.P4 to P6 medical records. It is pointed out by the learned counsel that the doctor who examined the petitioner, had noticed that further evaluation was necessary. X-ray was advised and he was referred to a higher centre. On further examination, it was found that there was a fracture on the right foot of the petitioner. He was advised to have a plaster cast and some medicines were also prescribed. It is further contended by the learned counsel that the doctor who examined the petitioner had found that he had to take rest. He was advised to

minimise his walking. He was further advised that he should move only for natural cause. However, it is conceded by the petitioner that on a further evaluation held by another doctor, it was found that petitioner was fit enough to undergo the training. Learned counsel submits that these two contradictory reports by the doctors would indicate that there was justifiable reason for the petitioner not to report for training.

I refrain from dealing with the above contention since in my view, these disputed questions of fact should not be dealt with in a proceeding under Article 226 of the Constitution. As noticed already, the three departmental authorities have concurrently found that petitioner was guilty of the charges levelled against him. The revisional authority had of course found some merit in the contention with regard to the quantum of punishment. It was therefore that the revisional authority had reduced the quantum. Therefore, I am satisfied that no interference is warranted with Ext.P12 order in toto. However, I find considerable force in the contention raised by the petitioner that some so called earlier punishments imposed on the petitioner were also take as a ground/charge in the course of the enquiry conducted against him. It is true that article 2 of the memorandum of charges had referred to the previous proceedings initiated against the petitioner. It may be true that on an earlier occasion, petitioner was found to have abstained from duty without permission. It may also be true that petitioner was found sleeping on one occasion while he was on duty. These two instances referred to in article 2 of the memorandum of charges had taken place about four years ago. Neither the appellate authority nor the revisional authority had adverted to this aspect.

Learned counsel points out that in the memorandum of revision petition, the petitioner had raised this contention specifically in ground B.

Having heard learned counsel for the petitioner and learned Assistant Solicitor General, I am satisfied that the authorities were not justified in holding that petitioner was a man of incorigible nature and he was failed to reform despite several admonitions and punishments. Apart from the two instances referred to in the Articles of charge, there is nothing on record to indicate that petitioner was a man of incorigible nature. In that view of the matter, such a sweeping allegation ought to have been avoided.

It is brought to my notice that petitioner is in his thirties. More importantly, Exts.P4 to P6 undoubtedly show that the doctor who examined him in fact found that petitioner had a fracture on his leg, though ultimately it was found by yet another doctor that he was fit enough to undergo the training. Any how, having regard to the entire materials on record, I am satisfied that reference to the second charge against the petitioner ought to have been avoided. It should be treated as though it does not form part of the record.

With the above direction, the original petition is closed.

(A.K. Basheer)
Judge.

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